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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/472,964	12/28/1999	DAVID K. GIFFORD	3CI00-3127	9422

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EXAMINER

HU, JINSONG

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/472,964

Applicant(s)

GIFFORD, DAVID K.

Examiner

Jinsong Hu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/31/00; 12/19/02.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. The claims are renumbered as 1-23 since the original claims do not have claim 18. The claims number in the following Office Action refers to the new claims number.

2. Claims 1-23 are presented for examination.

3. Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. The claim language in the following claims is not clearly understood.

i. As per claim 1, line 10, it is unclear the meaning of "internetwork", i.e., it refers to the Internet network, or it refers to any communication network.

The entire claims should be revised.

ii. As per claims 6 and 15, it is uncertain the meaning of the multicasting or broadcasting access [i.e., is it indicate the users accessing the server from different addresses at same time or group users access the server from same address].

Corrections are required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 4-5, 10, 13-14, 20 and 22 rejected under 35 U.S.C. 102(e) as being anticipated by Wallis et al. (US 6,282,569).

6. As per claims 1 and 4-5, Wallis teaches the invention as claimed including a replica router [10, Fig. 1] comprising:

at least one communications interface, a processor coupled to the at least one communications interface [col. 2, lines 49-54; col. 6, line 49 – col. 7, line 4]; and a memory coupled to the processor [col. 2, lines 59-61; 80, Fig. 1]; wherein the processor is configured to receive a network request for access from a client computer [30, Fig. 1; col. 2, lines 55-59]; calculate a performance metric value for each of at least two server replicas, the value specifying an estimated communication performance between the client computer and a server replica based upon the client computer's location in an network [col. 2, line 66 – col. 3, line 2; col. 3, lines 18-30; col. 7, lines 22-50] and direct the client computer to at least one server replica that is estimated to provide good performance based upon the client computer's location in the network based on the

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performance metric values of the server replicas as calculated by the replica router [col. 3, lines 2-9; col. 4, lines 4-5; col. 8, line 64 – col. 9, line 3].

7. As per claims 10 and 13-14, since they are method claims of claims 1 and 4-5, they are rejected for the same basis as claims 1 and 4-5 above.

8. As per claims 20 and 22, since they are program and means plus function claims of claim 1, they are rejected for the same basis as claim 1 above.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2-3, 11-12, 18-19, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallis et al. (US 6,282,569) as applied to claims 1, 4-5, 10, 13-14, 20 and 22, in view of Brendel (US 5,774,660).

11. Brendel is a prior art reference cited by the applicant on form 1449, dated to 3/31/2000.

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12. As per claims 2-3 and 11-12, Wallis teaches the invention substantially as claimed in claim 1. Wallis also teaches maintaining a database of the server replica information [col. 5, lines 5-15]. Wallis does not specifically teach the replica router is configured to receive advertisements from the server replica. However, Brendel on the other hand teaches the replica router is configured to receive advertisements from the server replica [col. 6, lines 34-41] and determine whether any of the server replicas are located behind firewalls [col. 20, lines 22-25]. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Wallis and Brendel because doing so would increase the functionality of the system by providing commercial information to user. One of ordinary skill in the art would have been motivated to modify Wallis's system with Brendel's receiving step to attract more users.

13. As per claims 18-19, 21 and 23, Wallis teaches the step of receiving replica server information and maintaining of the server replica information in a database [col. 5, lines 5-15] and directing the user to one of the server replica based after receiving user's request [col. 3, lines 2-9; col. 4, lines 4-5; col. 8, line 64 – col. 9, line 3].

14. Wallis does not specifically teach the replica router is configured to receive advertisements from the server replica. However, Brendel on the other hand teaches the replica router is configured to receive advertisements from the server replica [col. 6, lines 34-41] and determine whether any of the server replicas are located behind

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firewalls [col. 20, lines 22-25]. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Wallis and Brendel because doing so would increase the functionality of the system by providing commercial information to user. One of ordinary skill in the art would have been motivated to modify Wallis's system with Brendel's receiving step to attract more users.

15. Claims 6-9 and 15-17 are not rejected on art.

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Colyer (US 5,862,328), Kitai et al. (US 5,948,069) and Jinzenji et al. (US 6,032,189) disclose distribution network.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jinsong Hu whose telephone number is (571) 272-3965. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A. Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jinsong Hu

June 24, 2005



VIET D. VU  
PRIMARY EXAMINER